Remarks

The following remarks and the above amendments are submitted to address all issues in this case, and to put this case in condition for allowance. The claims are amended solely to better define the subject matter of the instant invention. After the above amendment, application claims 1-9 are pending in the application. Application claims 1 and 5 are independent.

Applicant has studied the Office Action mailed August 16, 2007, and has the following remarks.

Applicant thanks the Examiner for the telephonic interview of November 30, 2007, with Mr. Kirk Damman, in which the Examiner indicated that he felt an amendment to further indicate structure in Applicant's "laryngeal mask" was necessary, and that such an amendment would put this case in position for allowance. Without admission as to the correctness of this requirement, and simply to moot any rejection, Applicant therefore proceeds herein with an Amendment and Response incorporating such an amendment.

35 U.S.C. §103

The Examiner rejected claims 1-9 as anticipated by Galleher, Jr. (US 3,139,088). In so doing, the Examiner stated that Galleher is readable as a "laryngeal mask," and that Applicant "has not provided any specific structure to differentiate a laryngeal mask and a respiratory airway tube." (Office Action, p. 4).

Applicant respectfully traverses these rejections on the grounds that Galleher fails to show all elements of the claims, as amended herein. Specifically, Galleher fails to show Applicant's laryngeal mask as that term is understood by those of ordinary skill.

Applicant's laryngeal mask is contemplated to be a device under the ASTM Standard Specification for Supralaryngeal Airways and Connectors, indicative of how the term "laryngeal mask" is understood by those of ordinary skill. The ASTM definition is attached hereto as Appendix A. Moreover, Applicant has clarified herein that the term, as used in the claim, includes a positioning shield surrounding a patient's laryngeal opening (even though those of ordinary skill would understand such structure to be encompassed by the term "laryngeal mask"). (Specification, e.g., p. 2, ll. 19-21).

Galleher's oral inhaler or applicator with sealing means is not a "laryngeal mask" as that term is understood by one of ordinary skill, as it is not intended to seal the supralaryngeal area to maintain airway patency without passing through the vocal cords. Galleher's "respiratory tube having a length that is capable of reaching the larynx of a patient," as it was described by the Examiner on page 4 of the Office Action, is not disclosed with any such intention to seal the supralaryngeal area, nor is it disclosed with any relationship to the vocal cords. Galleher's tube also has no positioning shield, and therefore is distinguishable from Applicant's claimed laryngeal mask.

Moreover, Applicant respectfully asserts it would not be obvious to modify Galleher to comprise a laryngeal mask as that term is understood by those of ordinary skill, or to further comprise Applicant's positioning shield. Components of Galleher's device that the Examiner contends are "capable of reaching the larynx of a patient" are only very vaguely contemplated as an "airway." Galleher, col. 1, l. 69. Galleher discloses no relationship between the larynx and such an airway; it therefore would not be obvious to modify this relationship into a component that shields the larynx or seals the supralaryngeal area.

Therefore, Galleher fails to show the claimed elements of a "laryngeal mask" which includes devices comprising a positioning shield surrounding a patient's laryngeal opening, such that independent claims 1 and 5, and dependent claims 2-4 and 6-9 therefrom, are not rendered obvious by Galleher. It would not be obvious to modify Galleher to show these elements.

Conclusion

In light of the above remarks, Applicant believes there are no further issues regarding the patentability of the pending claims and respectfully requests the Examiner withdraw his rejections and allow all pending claims so that this case can pass on to issue.

Applicant encloses the appropriate fee for a one-month extension of time. Applicant believes no additional fees are due in conjunction with this filing, however, the Commissioner is authorized to credit any overpayment or charge any deficiencies necessary for entering this amendment, including any claims fees and/or extension fees to/from our **Deposit Account No. 50-0975**.

If any questions remain, Applicant respectfully requests a telephone call to the below-signed attorney at (314) 444-1316.

Respectfully submitted,
Lewis, Rice & Fingersh, L.C.

December 17, 2007

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APPENDIX A

Laryngeal Mask Adapter
Inventor: **Cook**
Serial No. (if known): **10/674,585**
Docket No : **14/1452US(1)**

Sheet 1 of 1

ACTIVE STANDARD: ASTM F2560-06 Standard Specification for Supralaryngeal Airways and Connectors

Developed by Subcommittee: F29.12
See Related Work by this Subcommittee
Adoptions:
Book of Standards Volume:

1. Scope

1.1 A supralaryngeal airway, or a device placed through the mouth, intended to seal the supralaryngeal area to maintain airway patency without passing through the vocal cords, to independently facilitate ventilation with or without delivery of gas to the lungs. Devices intended to provide a breathing airway and/or to simultaneously provide a conduit for the intubation of tracheal tubes, bronchoscopes, and suction devices are also included in the scope of this standard, as are the connectors located at the machine end of these devices.

1.2 Examples of supralaryngeal airway devices are laryngeal masks, tubes, airways and seals, cuffed oropharyngeal airways, and pharyngeal airways, and combination airway/esophageal obturators.

1.3 The following devices are outside the scope of this standard: nasal and oropharyngeal airways, anesthetic masks, oro- and naso-tracheal tubes, cricothyrotomy devices, dental appliances, tracheal stents, tracheal tubes, ventilating laryngoscopes, CPAP devices, esophageal obturators, bougies, and devices that require surgical placement.

1.4 This Standard requires dimensional disclosure so the operator will know which auxiliary instruments, such as tracheal tubes and bronchoscopes, will be size compatible.

1.5 Based on the risk assessment included in this document, requirements have been established to mitigate or reduce patient safety hazards identified during that process. See Annex D.

1.6 Flammability of airways, for example if used with certain flammable anesthetics, electrosurgical units, or lasers, is a well-recognized hazard that is outside the scope of this Standard. See Annex E.

Index Terms

ICS Number Code 11.040.10